

STATE OF IOWA
DEPARTMENT OF COMMERCE
UTILITIES BOARD

IN RE: AT&T CORPORATION, Complainant, v. QWEST CORPORATION, Respondent.	DOCKET NO. FCU-02-2
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**ORDER REQUIRING ADDITIONAL INFORMATION,
WAIVING TIME PROVISIONS OF 199 IAC 38.7(4)"d," AND
SHORTENING TIME FOR FILING OBJECTIONS TO
INTERCONNECTION AGREEMENTS**

(Issued August 6, 2002)

PROCEDURAL HISTORY

On February 27, 2002, AT&T Corporation (AT&T) filed with the Utilities Board (Board) a letter alleging that Qwest Corporation (Qwest) may have entered into interconnection agreements with some competitive local exchange carriers (CLECs), agreements that were not filed with the Board as required by 47 U.S.C. §§ 251(c) and 252(a)-(i).

On April 1, 2002, the Board issued an order docketing AT&T's complaint for investigation and establishing a briefing schedule to determine the scope of the obligation to file interconnection agreements with the Board. The parties filed briefs pursuant to that schedule, and on May 29, 2002, the Board issued an order defining

the scope of the obligation to file interconnection agreements, applying that definition to certain agreements already filed in this docket, and requiring that Qwest either request a hearing in this matter or file any other agreements it may have entered into that are interconnection agreements as defined by the Board.

On July 29, 2002, Qwest submitted a compliance filing consisting of a descriptive pleading and two exhibits. Exhibit A consists of 11 previously-unfiled agreements that, in Qwest's opinion, fall within the Board's definition of an interconnection agreement. Each of the Exhibit A agreements includes a provision requiring the parties to treat the agreement as confidential; in compliance with those provisions, Qwest filed Exhibit A with a request that the agreements be held confidential until August 8, 2002, to give the other parties to those agreements an opportunity to file with the Board a formal request for confidential treatment pursuant to 199 IAC 1.9 (2002), if the other parties believe the agreement qualifies for confidential treatment.

Exhibit B to Qwest's compliance filing consists of 19 other previously-unfiled agreements between Qwest and a CLEC. Qwest asserts that the Exhibit B agreements are not encompassed within the Board's definition of an interconnection agreement and therefore do not have to be filed with the Board. Qwest states it is filing these agreements "in the interests of full disclosure, and in order that the Board may examine Qwest's evaluations of the Order's standards to each of the CLEC agreements" Again, each of the agreements includes a provision requiring the parties to treat the agreement as confidential, and Qwest filed a request that the Exhibit B agreements be treated as confidential records until such time as the Board

determines that one or more of the agreements constitutes an interconnection agreement.

ORDER REQUIRING ADDITIONAL INFORMATION

In its initial review of the compliance filing, the Board finds that certain agreements appear to be incomplete and will require that Qwest file the missing information, or an explanation of the circumstances if the missing information is for some reason unavailable, as described below:

<u>Agreement</u>	<u>Potentially-missing Information</u>
Ex. B, No. 1	Page 2 of the agreement is missing.
Ex. B, No. 6	Paragraph 2 provides that the CLEC will purchase a minimum quantity of services, including "network elements," "at prices previously quoted by Qwest" If the previously-quoted prices are in any way different than the prices available to other CLECs at the time of the agreement or subsequently, then they must be filed. If they are the same prices as Qwest was already making available to other CLECs, then a statement explaining that fact should be filed.

This information, or a request for additional time indicating how much additional time is requested, should be filed with the Board no later than August 8, 2002.

WAIVER OF 199 IAC 38.7(4)"d" AND SHORTENING OF TIME FOR FILING OBJECTIONS

The Board's rules regarding negotiated interconnection agreements provide that when a negotiated interconnection agreement is filed with the Board, interested persons have 30 days from the date of filing to submit written comments regarding the agreement. 199 IAC 38.7(4)"d". Because of the unusual circumstances

surrounding these agreements, the comment period established by the rule will be waived and a different period will be specified.

The circumstances are unusual for two reasons. First, at Qwest's request the agreements are being held confidential until August 8, 2002, to allow the other parties to the agreements an opportunity to seek confidential treatment, if appropriate. Under these circumstances, it is inappropriate to have the comment period run from the date of filing. Instead, if no formal requests for confidential treatment are filed with respect to the Exhibit A agreements, the Board will make the agreements available to the public through the Board's Web site on August 9, 2002, and the time for filing comments will run from that date.

The other reason these circumstances are unusual is that Qwest has applied to the Federal Communications Commission (FCC) for authorization to provide interLATA services originating in Iowa, pursuant to 47 U.S.C. § 271. The FCC is required to issue a written determination approving or denying the requested authorization not later than 90 days after the application is received; in the case of Qwest's application, the 90 days will expire on September 11, 2002. Prior to making its determination, the FCC must consult with the Board to verify Qwest's compliance with the requirements of § 271(c). Qwest's compliance with the Board's orders in this docket may be relevant to that inquiry.

If the Board were to allow a full 30 days from August 9, 2002, for submission of written comments on the Exhibit A agreements, it is possible that the Board would be unable to fulfill its role with respect to the FCC's determination prior to the 90-day

deadline. Therefore, the Board will shorten the time period for submitting written comments on the Exhibit A agreements to 14 days from the date they are published on the Board's Web site. Thus, comments will be due on or before August 23, 2002, if the Exhibit A agreements are published on August 9, 2002, as contemplated.

The Board is waiving Rule 38.7(4)"d" pursuant to 199 IAC 1.3. The Board finds that application of the rule would pose an undue hardship on Qwest, the Board, and the FCC by making it unreasonably difficult, if not impossible, for the Board to fulfill its consultation duties under the federal Act. The Board finds that the waiver will not prejudice the substantial legal rights of any person, and that substantially equal protection of the public health, safety, and welfare will be afforded by means other than that prescribed in Rule 38.7(4)"d", because interested persons will still have a reasonable time to review the agreements and submit written comments. Finally, the Board finds that the provisions of the rule are not specifically mandated by statute or other provision of law; 47 U.S.C. § 252(e)(4) provides that the Board must act to approve or disapprove a negotiated interconnection agreement within 90 days of submission, but does not specify any minimum time for public comment on an agreement.

Finally, the Board will require that any parties to this docket that intend to file comments concerning the status of the Exhibit B agreements must file those comments on or before August 19, 2002.

ORDERING CLAUSES

IT IS THEREFORE ORDERED:

1. On or before August 8, 2002, Qwest shall file the additional information required by this order, or a request for additional time that specifies the amount of time required and the reasons additional time is required.

2. The provisions of 199 IAC 38.7(4)"d" specifying that interested persons may file written comments on a negotiated interconnection agreement within 30 days of the date the agreement is filed with the Board are waived with respect to the Exhibit A agreements. Instead, interested persons may file written comments on the Exhibit A agreements within 14 days of the date the agreements are published on the Board's Web site.

3. Any parties to this docket that intend to file comments concerning the question of whether the Exhibit B agreements are interconnection agreements must file those comments on or before August 19, 2002.

UTILITIES BOARD

/s/ Diane Munns

/s/ Mark O. Lambert

ATTEST:

/s/ Judi K. Cooper
Executive Secretary

/s/ Elliott Smith

Dated at Des Moines, Iowa, this 6th day of August, 2002.